

10 January 1976

MEMORANDUM FOR: Morning Meeting Participants

At a meeting with the staff of the Senate Select Committee on Friday evening we were given a later draft of the oversight bill. During the discussion various concepts were discussed, some of which are reflected in my marked up version of that draft. In your review of the draft the following may be of assistance to you.

1. Sections 4-12 along with Section 16 would not be public law but rather handled by Senate Resolution.

2. Section 8 still remains weak. I have attempted to place it in the same format as Section 7 of Senate Resolution 21 (setting up the Senate Select Committee). It needs an appellate procedure so that we could contest a proposed "authorized" disclosure. I suggested that we look at the proposal set forth in the Committee Reform Amendments of 1974, a copy of which is attached.

3. Section 8-B appears to make better sense only after some sort of appellate procedure is developed. This would give the advantage of peer pressure. In other words, an individual senator who wished to declassify an item would be offered a Senate procedure for declassification. If he was voted down by the committee and subsequently appealed to the leadership where he again lost, there is a greater likelihood that he would not make such material public. If he did, in the face of an appellate procedure, then perhaps the Senate Committee on Standards and Conduct might be more willing to take action against him.

4. I recommended the striking of Section 9 as an unnecessary encumbrance to the work of the committee. I asked the staff if there was any empirical evidence to support it and was told that it reflects the "hunch" of one or two senators. In addition, one of the staff members indicated that one of the senators was upset with the overriding role some staff members play. I

suggested that a senator might not want to wait six years as the statute would require, perhaps he might want to fire the person outright.

5. Paragraph 11 has been adjusted to provide for a more meaningful process for disclosure. Section 11-A sets forth an extremely high standard. I would hope we would be able to strike the word "grave." As an alternative we might wish to use the standard developed with the Pike Committee and also found in Section 662 of the Foreign Assistance Act "important to the national security."

6. Section 11-B, as written, would allow the Senate to refer the matter back to the Committee without taking action (like what happened to us with the assassination report). I pointed out to Senate Select Committee staffers that at a bare minimum, the President's certificate of non-disclosure could not be overridden by five members of a nine member committee and that the Senate should be forced to take affirmative action. At the meeting with Bill Miller, I talked about the majority of the Senate. [REDACTED] suggested that two thirds would be more appropriate. I certainly agree. STATINTL

7. Section 12 appears to be superfluous. It was suggested by a Senator but the staff agrees that it is unnecessary.

8. Section 13-A places the duty on the DCI to inform the Committee. As [REDACTED] pointed out, the draft language would commit us to a "lie." It is quite apparent that no DCI would know of all the planned intelligence activities in order to meet the requirement that he keep the committee fully and currently informed. The Senate Select Committee staff recognizes that. They are only referring to sensitive, hot, unusual, etc., instances. Since no word formulation could accomplish this, we suggested the deletion of some of the more all-encompassing references. STATINTL

9. Section 13-B places the responsibility on the DCI to furnish required information. It is conceivable that we could spell out an appellate procedure under which the DCI could refuse to respond to the name of the proverbial agent in Moscow. I suspect we may be better off by not going into such detail. For in the last analysis, any refusal could only be tested through a criminal contempt proceeding and the DCI presumably would have whatever exists of the umbrella of executive privilege.

10. Section 13-C provides authorization for the committee to identify specific areas where no action could be initiated until the committee has been advised.

STATINTL

11. Section 14 remains somewhat of a mystery. Your attention is invited to it. Neither [REDACTED] nor I could figure out why we were opposed to it.

12. Section 15 has been amended to limit GAO activities to financial audits as opposed to program audits.

13. Section 16, relating to Senate Select Committee materials, assumes that such records will be turned over to the new oversight committee. Bill Miller recognizes that in certain instances the materials they received were on loan. Presumably this can be negotiated.

14. Section 17 sets forth definitions.

15. Section 18 is a sop by the lawyers and I suggested they drop it.

Bill Miller would like our comments by noon Tuesday. Mike Duval at the White House, who has already met with the committee staff and given them the White House comments, asked for our comments Monday or Tuesday. I recognize the time is short but if I could obtain your comments by COB, Monday we could pull something together for Miller the following day.

STATINTL

[REDACTED]
Special Counsel to the Director

Attachments:
As Stated